

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Market Entry and Regulation  
of International Common Carriers  
With Foreign Carrier Affiliations

RM 8355

REPLY COMMENTS OF TELEGLOBE INC.

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## SUMMARY

Teleglobe Inc. opposes AT&T's Petition for Rulemaking. As the bulk of the comments demonstrate, Teleglobe Inc. is not alone in its opposition. The majority of commenters agree that adoption of AT&T's proposal would impose a rigid set of rules for market entry and regulation of international carriers that ignores current trends in international telecommunications services provisioning, overlooks distinctive national market structures, and disregards the public interest.

Entry into the United States market has been based on a number of standards as applied by the Commission. Instead of developing a detailed set of conditions, the Commission would better serve the public interest and further the growing trend towards competition and liberalization by maintaining a flexible approach that will best allow it to respond to these changes. This trend is illustrated by the development of an open, competitive market in Canada. We believe the Commission should seek to enhance the administrative efficiency by which it applies its current policies, rather than risking derailment of these international developments by adopting the inflexible rules proposed by AT&T.

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Teleglobe Inc. ("Teleglobe"), by its attorneys, hereby files its Reply Comments in the above-referenced proceeding. This proceeding was initiated as a result of the Petition for Rulemaking filed by American Telephone and Telegraph Company ("AT&T") seeking to condition entry by a foreign carrier into the U.S. market on the notion of "comparable competitive opportunity" for U.S. carriers in the foreign country concerned, and on requirements to ensure that the foreign carrier will not take advantage of any market power it may have in its own market.

Introduction

Teleglobe is the parent holding company of Teleglobe Canada Inc. ("TCI"), which provides wholesale overseas telecommunications services to Canadian retail carriers. Its interest in this proceeding stems, in large measure, from the importance that developments in the North American marketplace

and regulatory environment have to Canadian carriers, although TCI does not serve the United States market.

Currently, some 70% of Canada's international telephone traffic is with the United States. As a consequence of the inter-relationships between Canada and the United States, the outcome of this proceeding could have an immediate and critical impact on the North American marketplace as well as the broader international telecommunications services market. In addition, TCI's position as a Canadian carrier provides a beneficial perspective on the economic and policy ramifications of this proceeding.

As described in more detail below, Teleglobe does not support AT&T's petition for several reasons. First, AT&T's petition overlooks the fact that, because of the vital nature of telecommunications, individual countries have adopted unique approaches to regulation which they believe to be most appropriate from a national perspective.<sup>1/</sup> Moreover, as the Commission is well aware, existing regulatory structures in most areas of the world are in a period of great change. Thus, any attempt to evaluate or make decisions based upon a mechanistic application of a single regulatory formula -- particularly one as rigid as that proposed by AT&T -- is certain to be nonproductive. Indeed, Teleglobe suggests that the creation of such a "formula" would merely impose an additional layer of regulation to what

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<sup>1/</sup> See, e.g., Comments of BT, at 11; Cable & Wireless, at 15; MCI, at 26; ENTEL, at 17.

will inevitably continue to require the Commission's evaluation of circumstances on a case-by-case basis, and potentially lead to undesirable delays and inefficiencies.<sup>2/</sup>

Second, AT&T's approach does not appear to be in the interest of U.S. consumers. While presented as a "market opening" initiative, it almost certainly would initiate a round of retaliatory actions -- actions that would likely be most felt by new entrants and incumbents who are less entrenched than AT&T.

Third, while we agree with AT&T that it is appropriate for the Commission to ensure that foreign carriers are not able to unfairly leverage any access control position in foreign markets which could translate into a preferential position in the U.S. market, AT&T's proposal would, in fact, result in market closings rather than market openings. Moreover, AT&T itself enjoys considerable market leveraging power both in the U.S. and abroad.<sup>3/</sup>

In addition, we believe that AT&T has left some incorrect impressions of the Canadian market which is, in fact, one of the most liberal markets in the world. We will attempt to provide a better understanding of that market in the discussion that follows.

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<sup>2/</sup> TCI's objection to the inflexibility of AT&T's proposal is echoed by most of the initial commenters. See, ACC Global Corp., at 2,5; Cable & Wireless, at 9; DOMTEL, at 6; ENTEL, at 7; MCI, at 6; and TLD, at 14.

<sup>3/</sup> See Comments of Cable & Wireless, at 4, 7; TLD at 12-13; MCI at iv, 9-10.

The AT&T Petition, which calls for a "comprehensive" set of rules governing access to the U.S. market, is not the appropriate vehicle for delivering the increased flexibility and administrative efficiency that is required to achieve the Commission's goal to encourage competition while at the same time ensuring that foreign carriers are effectively regulated. It is our position that the Commission must have at its disposal the tools to adequately address the rapidly evolving international market for telecommunications services. We suggest that the Commission's current rules are the appropriate ones for determining market entry. While both the manner in which they are applied and the manner in which they can be abused and manipulated by opposing interests may necessitate administrative improvements to the current system, it is essential that the Commission continue its more flexible approach, rather than the rigid one proposed by AT&T.

I.        Every Country Adopts A Unique Approach To  
             Regulation Which It Believes To Be Most  
             Appropriate From A National Perspective.

AT&T's Petition overlooks distinctive national market structures. As was clearly demonstrated in the comments submitted in this proceeding, AT&T has glossed over the inescapable fact that the regulation found in many foreign markets is the result of specific economic, social, political, and technological developments. It would not, in our opinion, appear realistic for AT&T to advocate that the Commission impose

a blind test on any foreign market, without reviewing the specific characteristics and developments occurring in that market.

This is the case with AT&T's overly simplified description of the Canadian market. For example, AT&T states that no Canadian carriers, whether Canadian or foreign-owned, are permitted by Canadian regulation to compete with Teleglobe in the Canadian international telephone services market.<sup>4/</sup>

Canada has chosen to adopt a "carrier's carrier" approach to the provision of the 30% of Canada's international traffic that is overseas. The United States traditionally adopted this approach only for intercontinental satellite traffic. However, in Canada, there is vigorous competition among domestic long distance carriers and resellers, and on a facilities basis for the 70% of Canada's international traffic, which is with the United States. In addition, there is open competition in the resale of all international services, overseas as well as within Canada and the United States.

The structure of the Canadian telecommunications industry differs markedly from that of the United States where the major domestic long-distance facilities-based carriers also provide international services. Unlike the situation in the United States, Canadian telecommunications have evolved as a segmented marketplace. In Canada, local services are provided by private and government-owned (municipal and provincial) telephone

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<sup>4/</sup> See AT&T Petition for Rulemaking, at 24.



companies. Domestic and Canada-U.S. long-distance services are provided by the Stentor regional telephone companies,<sup>5/</sup> independent telephone companies (not associated with Stentor), New entrants, such as Unitel Communications Inc,<sup>6/</sup> and the many resellers. TCI provides intercontinental "carrier's carrier" services on a wholesaler basis to Canadian retail service providers (e.g., facilities-based carriers and resellers).

II. AT&T's Recommendations Are Not In The  
Public Interest Or In The Interests  
Of The United States Marketplace.

AT&T makes the argument that the Commission should be guided by public interest arguments to ensure competition in the global market by requiring "comparable opportunity" for U.S. carriers in any foreign market from which competitive entry is sought in the United States. Entry into the United States market to date has been based on a number of qualifying standards as applied by the Commission. While the Commission has demonstrated its interest in a further examination of foreign companies' participation in the U.S. market, on several grounds, AT&T

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<sup>5/</sup> Stentor is an alliance of regional telephone companies providing local and long-distance services in Canada. BCTel, the second largest telephone company, and Québec Téléphone (an independent telephone company) are majority owned by the Anglo-Canadian Telephone Company, a wholly owned subsidiary of GTE Corporation of the United States.

<sup>6/</sup> Unitel Communications Inc., which is owned by Canadian Pacific Ltd. (48%), Rogers Communications Inc. (32%) and AT&T (20%), entered the domestic facilities-based market in competition with the Stentor companies in 1992.

appears to be overlooking the broad public interest in calling for the adoption of its proposed comprehensive set of rules.

First, at a time when the trend towards increasing competition in global services is more evident than ever and the importance of a global economy has never been greater, AT&T's Petition would effectively close off the United States market to further competition. American and international consumers would not be able to reap the benefits associated with increased competition among carriers. They would be deprived of the benefits of greater economic and technical efficiencies, and a more rapid rate of innovation. Both in the short term and the long term, the U.S. public interest is threatened by the onerous conditions that AT&T would have imposed on entry into the U.S. market.

Second, AT&T's approach requiring a "mirroring" of the U.S. regulatory system is likely to be counter-productive in that it might well make foreign markets become more protectionist or slow their rate of liberalization. It is both unrealistic and potentially offensive to foreign governments.

Given the dramatic progress that has been achieved in liberalization around the world without the application of such heavy-handed measures, and the concomitant benefits to the interests of telecommunications users that have resulted, it is impossible to believe that protection of the U.S. public interest requires such measures now.

III.        The Canadian Telecommunications Market  
Is Among The Most Open In The World.

The example of Canada, which is one of the most open markets in the world to foreign carriers -- in practice as well in theory -- demonstrates how the United States can best serve the public interest by leading by example. Much of Canada's liberalization has been positively affected by both the demonstration of the benefits that can flow from competition and by stimulating demands by Canadian telecommunication users for the same opportunities as those available to their American counterparts.

The results are shown not only by the formal liberalization measures discussed *infra*, but by looking at recent U.S. carrier entry in Canada through equity stakes and strategic alliances with major Canadian telecommunications providers.

In September 1992, the Stentor companies and MCI Corporation formed a strategic alliance to develop products jointly and work together on international expansion. Stentor paid MCI US\$150 million to use its software in their networks. The target market for the services to be provided to Canadian customers using MCI's intelligent network is the 300 or so largest Canadian customers who generate 40-60% of all Canadian telecommunications network revenues.

In January 1993, AT&T took a 20% equity stake in Unitel Communications Inc. AT&T also has two seats on Unitel's nine-member Board of Directors. In February 1993, three former AT&T

executives were appointed to Unitel as Chief Operating Officer, Senior Vice President, Business Unit Group and Senior Vice President, Operations. These appointments led to the departure of seven Canadian managers. In October 1993, a fourth senior AT&T executive was named as Unitel's President and Chief Executive Officer.

In August 1993, Sprint took a 25% equity stake in Call-Net, Canada's largest telecommunications reseller, and the fourth largest Canadian long-distance services provider overall. Sprint receives royalties on its products and services sold in Canada. Sprint also has three seats on Call-Net's nine-member Board of Directors, and in October 1993, the name of Call-Net's long distance subsidiary was changed to "Sprint Canada Inc."

Since the introduction of competition in the long distance market in Canada in June 1992, there already is significant participation by U.S. carriers in the Canadian market. By contrast, there is very little Canadian presence in the U.S. telecommunications services market. FONOROLA, a Montreal reseller, is the only Canadian company licensed by the FCC as a telecommunications service provider in the United States.

The Canadian market, while not an identical mirror image of the United States, is marked by considerable liberalization and competition in the provision of telecommunications services. A brief survey of the steps to

introduce progressive regulatory changes in the Canadian telecommunications market is warranted.

Recent policy statements by the Canadian government have distinguished between facilities and services-based carriers. They suggest that open competition in value-added and resale services will be actively encouraged. Moreover, facilities-based competition also will be encouraged, but with provisions to ensure Canadian control of facilities so as to avoid potentially wasteful duplication of network resources.<sup>7/</sup>

Since 1979, Canada has had competition in the private line market. In 1980, terminal competition was allowed. Since 1984, resale and sharing for the provision of value-added services has been permitted, and since 1987, resale of basic long-distance services has been allowed in Bell Canada and BC Tel territories (that is, Quebec, Ontario and British Columbia). In 1990, the CRTC allowed the resale of private line domestic services for "joint-use" voice applications, and the same year, it allowed resellers and other customers direct access to Teleglobe Canada's overseas gateway facilities.

In 1992, the CRTC decided to permit facilities-based competition in the domestic and Canada-U.S. long distance market, and it extended the scope of resale activity to include the resale of Wide Area Telephone Service (WATS) and other volume

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<sup>7/</sup> Originally proposed measures to limit foreign ownership to 20% of all shares in facilities-based companies have been relaxed in the new Telecommunications Act to apply only to voting shares, and on a more liberal basis (33%), to an indirect corporate shareholding.

discounted services. International simple resale (i.e., private line voice services interconnected to the public switched network at both ends) also has been allowed since 1991, on the condition that it is permitted at the other end.<sup>8/</sup> Moreover, there are no restrictions on foreign carriers or their affiliates providing intercontinental resale services in Canada so long as they do not also operate as facilities-based carriers in Canada.

In comparison, in its Petition, AT&T stresses the openness of the U.S. market. While the U.S. regulatory environment is relatively open, the U.S. market for international and domestic long distance appears, in fact, to be dominated by only a small number of players, with AT&T being by far the market leader.

Given the way the Canadian telecommunications market has evolved, TCI does not have market power to leverage in the international marketplace. In the first place, within Canada, TCI receives from and delivers overseas telephone calls to the domestic carriers who, in turn, deal directly with Canadian subscribers. Outside of Canada, TCI again does not deal directly with the end user. Instead, overseas traffic carried on TCI's facilities is passed on to the foreign carrier in the destination country in proportion to the amount of traffic received from that carrier in the same market.

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<sup>8/</sup> This parallels the United States policy of permitting the same type of services based on reciprocity.

It is worth reiterating that the Canada-U.S. international route is wide open to competition. Moreover, TCI does not provide any Canada-U.S. services. Thus, TCI could not leverage any position in the Canadian market to the disadvantage of a U.S. carrier for international traffic originating or terminating in that country.

Although in Canada, a foreign carrier cannot operate its own facilities to provide Canada-overseas services, Canadian regulatory policy requires TCI to provide access to its facilities on a non-discriminatory basis. Indeed, the Canadian Radio-television Commission's (CRTC) approval of TCI's Globeaccess Services Tariff allows TCI to provide wholesale "carrier's carrier" services to all service providers operating in Canada (foreign as well as Canadian) on an equal access basis -- that is, under exactly the same terms and conditions. It must be concluded from this, that TCI has no ability to leverage any market power, in its home market or elsewhere.

### Conclusion


Teleglobe commends the Commission for recognizing the increasing importance of the international telecommunications services market and that the United States is well served by a robust and competitive marketplace both domestically and overseas. The record built by the Commission shows that it has taken constructive steps to ensure and promote competition in the rapidly evolving global marketplace for international

telecommunications services, and AT&T's Petition appropriately calls upon the Commission to seek and expand the benefits resulting from a competitive market for international services.

In its review of the international services market, the Commission must recognize the value of maintaining a flexible policy approach that will allow it the freedom to respond to the specific characteristics of each market, while at the same time attempting to improve the efficiency of its administrative procedures in applying that policy. It should neither attempt to address a highly dynamic and diverse area through a detailed set of rules nor appear to be attempting to dictate an ethnocentric set of "rules of regulation" to foreign governments.

Respectfully submitted,

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November 16, 1993



## ATTACHMENT

### Teleglobe Canada

Teleglobe Canada Inc. (TCI) was established in 1949 as a wholly government-owned corporation (then called the Canadian Overseas Telecommunications Corporation, "COTC") to provide intercontinental telecommunications to Canadians. At that time, the Canadian government acquired the assets and took over the operations of Cable and Wireless Limited and the Canadian Marconi Company, which provided undersea cable and radio services, respectively.

The government's reasons for creating TCI were twofold: first, it recognized the strategic importance of intercontinental telecommunications in the Canadian economy. Second, it protected Canada's national sovereignty by ensuring that the means by which those communications are provided are controlled by Canadians.

In April 1987, the Government of Canada divested its assets in TCI, by selling it to a privately owned company, Memotec Data Inc. (now Teleglobe Inc.) of Montreal. In 1992, Charles Sirois, a private businessman, bought almost 20% of Teleglobe Inc. (a publicly held management holding company which has a number of wholly-owned subsidiaries, along with specialized divisions).

At the time of TCI's privatization, the government stated that it intended that TCI would retain its exclusive mandate for intercontinental telecommunications for at least five years. In March 1992, a five-year extension was announced, to 1997.

The 1987 Act that privatized TCI recognized the importance of overseas telecommunications to Canadian sovereignty by precluding foreign telecommunications operators or their affiliates from holding any ownership interest in TCI. Foreign ownership of TCI by non-carriers has been limited to a maximum of 20%. These provisions are expected to be made consistent with Canada's new Telecommunications Act. Additionally, ownership interest in TCI by Canadian telecommunications operators has been restricted to a maximum of 33% of "voting interests."

TCI's fixed assets or facilities fall into three main categories. It shares with a number of foreign entities, ownership in close to a hundred transoceanic submarine cables. TCI also has ownership interests in the INTELSAT and INMARSAT international satellite systems. Finally, TCI operates gateway switching centers in Montreal, Toronto and Vancouver where overseas traffic is routed to and from the networks of Canada's domestic carriers.

Apart from its international gateways and satellite terminals, TCI does not own or operate any network facilities within Canada. Intercontinental communications are originated or terminated via the facilities of the domestic telephone companies and Unitel.

Finally, the interconnection arrangements between TCI's overseas facilities and the local facilities of domestic carriers are such that they do not provide TCI direct access to Canadian telecommunications users. It must rely instead on arrangements with telephone companies and other domestic network operators in order to provide its overseas services to Canadian users.

## CERTIFICATE OF SERVICE

I, Laura E. Magner hereby certify that on the 16th day of November 1993, a true copy of the foregoing Comments of Teleglobe Inc. was mailed, postage prepaid, to the following:

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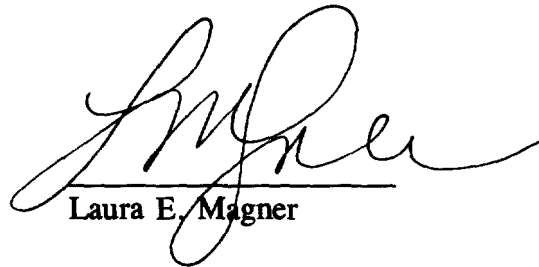
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